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16 Attorneys for Defendant

17 RUTHIA HE

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION

21 UNITED STATES OF AMERICA,

22 Plaintiff,

23 v.

24 RUTHIA HE, A/K/A RUJIA HE, and
25 DAVID BRODY,

26 Defendants.

27 CASE NO. 3:24-cr-00329-CRB

28 **DEFENDANT RUTHIA HE'S NOTICE OF
WITHDRAWAL OF ADVICE OF
COUNSEL DEFENSE.**

1 On September 15, 2025, Ms. He served the Government with a timely Notice of Intent to
2 Raise an Advice of Counsel Defense. Dkt. 399-1 (hereafter, the “Notice”). On September 19, the
3 Government moved to exclude Ms. He’s advice of counsel defense wholesale, but did not seek
4 any other relief. *See* Dkt. 399. On September 22, Ms. He opposed the Government’s motion to
5 preclude the jury from learning that Ms. He sought and received legal advice on *specific* Done
6 policies and practices that the Indictment and the Government’s exhibits expressly place at issue,
7 consistent with well-established Ninth Circuit law on limited subject-matter waiver. *See* Dkt. 401.

8 On September 22, the Court issued an oral ruling, over Ms. He’s strenuous objection,
9 ordering *sua sponte* a remedy that the Government did not seek, and which Ms. He did not
10 therefore have a chance to brief. The Court held that, in order for the Court to evaluate whether
11 or not Ms. He had in fact asserted an appropriate limited subject-matter waiver in the Notice, the
12 Government—and specifically, the *prosecution team*—would be permitted to depose, under
13 Federal Rule of Criminal Procedure 15, and compel the production of records from (i) *any* attorney
14 consulted by Done or Ms. He, (ii) regarding *any and all* legal advice provided, (iii) with respect to
15 *any* subject that the prosecution team determines to be related to the Indictment, including on
16 subjects outside of those described in the Notice, as well as the basis for that advice, including
17 communications between Ms. He and counsel. *See* Exhibit A (Transcript of Sept. 22, 2025
18 Hearing at 49:5-74:23, 99:18-100:8). The Court also denied Ms. He’s request that the filter team
19 currently in place to review privileged communications in this case—and *not* the prosecution
20 team—be the Government lawyers tasked with this exercise. *See id.* at 72:18-75:23.

21 The Court’s *sua sponte* ruling presented Ms. He with a Hobson’s choice between (1)
22 waiving the privilege, disclosing *to the prosecution team*, and forever losing confidentiality over
23 *all* of her communications with counsel, on subjects that go far beyond her Notice; or (2) forfeiting
24 an advice-of-counsel defense which powerfully negates the Government’s proof on the specific
25 subject matter at issue in this case, pursuant to her constitutional right to present a defense. *See*
26 *Bittaker v. Woodford*, 331 F.3d 715, 724 n.7 (9th Cir. 2003).

1 On September 22, following the Court's ruling, Ms. He notified the Government that she
2 was withdrawing her Notice of Intent to Raise Advice of Counsel Defense and asked the
3 Government to destroy the privileged materials that she had produced pursuant thereto. Ms. He
4 hereby files this Notice to advise the Court of the same.

5 Dated: September 24, 2025

WILLKIE FARR & GALLAGHER LLP

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8 By: /s/ Koren Bell
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10 Steven J. Ballew
11 *Attorneys for Defendant*
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